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2013 FEB -4 PM 2:30

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Dimitritza Toromanova,

Case No.: 2:12-cv-01637-LRH-CWH

Plaintiff,

v.

PLAINTIFF'S MOTION FOR RELIEF
FROM ORDERS AND JUDGMENTS -
FRCP 60

WELLS FARGO BANK, N.A., *et al.*,

Defendants.

Oral Argument Requested

I move this court for relief from its Orders and Judgments.¹ I base this motion on FRCP 60(b), the case record, my supporting Points and Authorities, and:

This Motion is Timely

FRCP 60(c) mandates this motion be made "within a reasonable time." This Motion is timely filed according to FRCP 60(c)(1)² and FRAP 4(a)(4)(A)(vi).

According to this Appellate Rule, to preserve my right of appeal I must file this Motion for Relief within 28 days of the date the Orders were entered. Because Judge Hicks' first order was entered January 7th, so long as I file and serve this no later than February 4th that right is preserved.

¹ See docket ##34-40

² "A motion under Rule 60(b) must be made within a reasonable time — and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding."

SUPPORTING POINTS AND AUTHORITIES

This motion is made under FRCP 60(b)'s "GROUNDS FOR RELIEF FROM A FINAL JUDGMENT, ORDER, OR PROCEEDING." In particular FRCP 60(b) provides "**On motion and just terms, the court may relieve a party . . . from a final judgment, order, or proceeding for the following reasons. . .**" This motion is made pursuant to Rule 60(b) for:³

- (3) "fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party"
- (4) "the judgment is void"
- (5) "applying it [the Order] prospectively is no longer equitable"
- (6) "any other reason that justifies relief."

"fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party"

As I have explained on the case record, the opposing parties have misrepresented Defendant Labo's standing as being "diverse."

"the judgment is void"

and

"(5) "applying it [the Order] prospectively is no longer equitable"

Black's Law Dictionary defines a void judgment as:

³ My emphasis on all quoted texts is in boldface unless otherwise noted

“A judgment that has no legal force or effect, the invalidity of which may be asserted by any party whose rights are affected at any time and any place, whether directly or collaterally. • From its inception, a void judgment continues to be absolutely null. It is incapable of being confirmed, ratified, or enforced in any manner or to any degree. One source of a void judgment is the lack of subject-matter jurisdiction.”⁴

This court has clearly erred in so many ways it's difficult to know where to begin. Overall, I have sincere doubts this judge actually read anything I filed with the court. It appears he instead just rubber-stamped Defendants' arguments and ignored all of mine. After all, they were submitted by officers of the court while I am a “vexatious litigant.”⁵ This is yet another gross injustice. The specifics:

Order #34

This judge said “Plaintiff Toromanova filed a complaint in state court against defendants for wrongful foreclosure. See Doc. #1, Exhibit A.”⁶ I just read my Complaint again as presented to this court by Defendant Wells Fargo.⁷ Neither “wrongful” or “foreclosure” are found anywhere in my Complaint.

This judge also said “In her complaint, Toromanova seeks a declaration that she owns the underlying property free and clear of any defendants' interest.”⁸ This

⁴ Eighth Edition, page 861

⁵ See PACER @ Case 2:12-cv-01637-LRH-CWH Document 35 Filed 01/07/13 Page 3 of 3, lines 6-7

⁶ See PACER @ Case 2:12-cv-01637-LRH-CWH Document 34 Filed 01/07/13 Page 1 of 3, lines 18-19

⁷ Begins on PACER @ Case 2:12-c" v 1637 Document 1-2 Filed 09/18/ Page 2 of 11

⁸ PACER @ Case 2:12-cv-01637-LRH-CWH Document 34 Filed 01/07/13 Page 3 of 3, lines 5-6

is a complete falsehood – nowhere in my Complaint do I say “free and clear.”

In Order #34 this judge said:

“ . . . Labo is not a proper defendant in this action. Therefore, based on the allegations in the complaint, the court finds that non-diverse defendant Labo is a fraudulently joined defendant whose citizenship does not defeat the exercise of diversity jurisdiction. Accordingly, the court finds that there is complete diversity between the parties and that the exercise of diversity jurisdiction is appropriate.”⁹

This is proof this judge didn't bother to read my motion to remand, either. It was explained there Labo is a defendant because Nevada law *requires* her to be.¹⁰

Under my heading “1. Labo is a defendant because it is required by Nevada law” I took the trouble to explain the application of NRS 30.130. This judge failed to explain how or why this requirement of Nevada law does *not* apply.

Order #35 and my Objection to magistrate's order

After a litany of the many motions filed against me this judge said “Plaintiff Toromanova did not file an opposition.”¹¹ My motion to remand explained:

“Because the court's removal jurisdiction is questioned, the Minute Orders and Oppositions would be relevant only if this court denies this motion. I reserve the right to then file serve my opposition their motions.

“Before it may move on to dismissal and my oppositions, there is the threshold inquiry of the court having or lacking the

9 PACER @ Case 2:12-cv-01637-LRH-CWH Document 34 Filed 01/07/13 Page 3 of 3, lines 12-16

10 PACER @ Case 2:12-cv-01637-LRH-CWH Document 17 Filed 10/10/12 Page 3 of 6

11 PACER @ Case 2:12-cv-01637-LRH-CWH Document 35 Filed 01/07/13 Page 1 of 3

jurisdiction to proceed. I believe this court does not.”¹²

I explained the above more fully in my Objection to the magistrates' order.¹³

That Objection was based on not only this court's lack of jurisdiction but its obligation to rule on jurisdiction *before* proceeding to anything else, including either discovery or the merits.¹⁴ It included the U.S. Supreme Court's striking down what this court evidently preferred to follow the “doctrine of hypothetical jurisdiction.” I said:

“In *Steel Co. v. Citizens for A Better Environment*, 523 U.S. 83 (1998), the Syllabus explained:

“(b) This Court declines to endorse the “doctrine of hypothetical jurisdiction,” under which **several Courts of Appeals have found it proper to proceed immediately to the merits question, despite jurisdictional objections . . . In a long and venerable line of cases, this Court has held that, without proper jurisdiction, a court cannot proceed at all, but can only note the jurisdictional defect and dismiss the suit.**”¹⁵

Because I objected to the magistrate's order, FRCP 72(b)(3) requires “The district judge **must determine de novo** any part of the magistrate judge's

12 PACER @ Case 2:12-cv-01637-LRH-CWH Document 17 Filed 10/10/12 Page 1 of 6
13 Docket #32

14 Begins @ Case 2:12-cv-01637-LRH-CWH Document 32 Filed 11/30/12 Page 3 of 6
“By allowing these proceedings to be diverted to a magistrate in the name of discovery. . .”

15 See also the discussion in *Phelps v. Alameida*, 569 F.3d 1120 (9th Cir. 2009), confirming both Supreme Court and Ninth Circuit precedents as being “unequivocal” in “rejecting the doctrine of “hypothetical jurisdiction” (citing *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998))

disposition that has been properly objected to.”¹⁶ The only qualifier I see in this Rule is that my objection was “proper.” Because neither Order mentioned anything about that or even the magistrate’s order, this judge neglected his duties on this point also.

“any other reason that justifies relief.”

I reserve this point.

SUMMARY

I have a substantive right to stay in my home¹⁷ and this court is bound to protect that right if it is to be in accordance with law.¹⁸ Instead this judge did what the Rules Enabling Act forbids, he used federal procedural law as an excuse for abridging my substantive rights.¹⁹

16 My emphasis in boldface

17 See *Dixon v. Thatcher*, 103 Nev. 414, 416 (1987): “property and its attributes are considered unique and loss of real property rights generally results in irreparable harm”; see also *Thatcher v. Powell*, 19 U.S. (6 Wheat.) 119, 123 (1821): “That no individual or public officer can sell, and convey a good title to, the land of another, unless authorized so to do by express law, is one of those self-evident propositions to which the mind assents, without hesitation; and that the person invested with such a power must pursue with precision the course prescribed by law, or his act is invalid, is a principle which has been repeatedly recognized in this court.”

18 28 U.S.C.A. § 2072(b) requires that federal procedural rules “not abridge, enlarge or modify any substantive right”

19 “A right that can be protected or enforced by law; a right of substance rather than form.” - Black’s Law Dictionary (8th ed. 2004) page 1349. See also *Sibbach v. Wilson & Co.*, 312 U. S. 1, 14 (1941), which said this Rule must “really regulat[e] procedure, – the judicial process for enforcing rights and duties recognized by substantive law and for justly administering remedy and redress for disregard or infraction of them”

Judge Hicks has:

- Inserted words into my removed complaint that were not there, then bootstrapped²⁰ diversity jurisdiction where none exists in direct violation of the “doctrine of hypothetical jurisdiction”;
- Ignored the mandate of law imposed on him by 28 U.S.C.A. § 1447(c) to remand this case “If at any time before final judgment it appears that the district court lacks subject matter jurisdiction”;
- Put his thumb on the scales of justice to favor the other parties in violation of his oath;²¹
- Ignored his duty imposed by FRCP 72(b)(3) to provide a de novo determination of the magistrate's order according to my Objection;
- Without subject matter jurisdiction no act of this court has legal effect or authority, and all acts of the court docketed as ##34-40 are void;

I remind the court it has the obligation to accept my submissions “however inartfully pleaded.”²² Like the Sacketts I'm just feeling my way through this case as

20 “To reach an unsupported conclusion from questionable premises.” – from the same Black's dictionary, page 195

21 28 U.S.C.A. § 453: “Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of his office: “I, __, do solemnly swear (or affirm) that **I will administer justice without respect to persons, and do equal right to the poor and to the rich**, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as __ under the Constitution and laws of the United States. So help me God.”

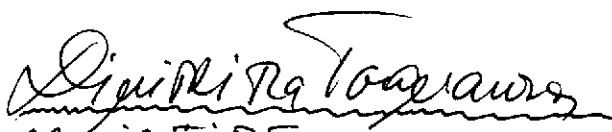
22 The Supreme Court has “instructed the federal courts to liberally construe the ‘inartful pleading’ of pro se litigants,” *Eldridge v. Block*, 832 F.2d 1132, 1137 (9th

pleaded.”²² Like the Sacketts I’m just feeling my way through this case as best as I am able.²³

RELIEF REQUESTED

The court's order on this motion and on just terms²⁴ to relieve me of its Orders and Judgments docketed as ##34-40, and reinstate my “Notice of Pendency of Action (Doc. #1-3 at 2).” As an alternative, in the very least this judge should allow me to reserve this motion's points, then file a opposition to the motions to dismiss.

I expressly reserve the right to amend or supplement this Motion if I believe it is needed, and to move the court for sanctions against the removing parties at the appropriate time. I also reserve my right to have the court construe this Motion according to FRCP 1 and 8(e) and applicable law.


PLAINTIFF
Feb. 4, 2013

²² The Supreme Court has “instructed the federal courts to liberally construe the ‘inartful pleading’ of pro se litigants,” *Eldridge v. Block*, 832 F.2d 1132, 1137 (9th Cir. 1987) (quoting *Howey v. United States*, 481 F.2d 1187, 1190 (9th Cir. 1973); see also *Hughes v. Rowe*, 449 U.S. 5, 9, 101 S. Ct. 173, 66 L. Ed. 2d 163 (1980): “It is settled law that the allegations of [a pro se litigant's complaint] ‘however inartfully pleaded’ are held ‘to less stringent standards than formal pleadings drafted by lawyers”

²³ *Sackett v. Environmental Protection Agency*, 132 S.Ct. 1367 (U.S. 03/21/2012)

²⁴ “Just” is defined as “Legally right; lawful; equitable.” - Black's Law Dictionary (8th ed. 2004), page 880

CERTIFICATE OF SERVICE: I certify that on this date I did serve a true copy of this Motion on each Defendant's attorney of record by mail.

Submitted with all rights reserved on February 4, 2013


Dimitriza Toromanova, Plaintiff